

U.S. Department of Labor

Inspector General
Washington DC 20210



NOV. 5, 1996

MEMORANDUM FOR: J. DAVITT McATEER
Assistant Secretary for
Mine Safety and Health

FROM: CHARLES C. MASTEN
Inspector General

SUBJECT: Review of MSHA Contract with the United Mine
Workers of America and the Bituminous Coal
Operators Association
Report No. 08-OEI-97-MSHA

This memorandum report presents the results of our review of a proposed contract between the Mine Safety and Health Administration (MSHA), the United Mine Workers of America (UMWA) and the Bituminous Coal Operators Association (BCOA). We identified serious concerns regarding the propriety of the proposed contract as well as policy issues warranting further consideration which led us to recommend that the contract not be authorized. Additional findings pertained to the relevance to MSHA's mission of some training subjects, the accuracy of procurement documents, the suitability of contract payment provisions and the waiver of MSHA Academy fees. The Assistant Secretary for Mine Safety and Health responded to our draft report on October 30, 1996, advising that MSHA will not execute the proposed contract and will reconsider the waiver of MSHA Academy fees for the training proposed to be conducted under the contract. A copy of the Assistant Secretary's response is included as an attachment to this memorandum.

I. Background

The Assistant Secretary for Mine Safety and Health requested that the Office of Inspector General review the concerns raised in correspondence, dated August 2, 1996, from Congressman Schaefer. This report presents the results of the first of a series of reviews planned to address the issues forwarded by the Congressman. In the case of this contract, the complaint focused on the propriety of a sole source procurement by MSHA with the United Mine Workers of America. The purpose of our review was to evaluate MSHA's compliance with applicable statutory, regulatory and procedural requirements and to identify any program

efficiency or effectiveness issues raised by the proposed procurement action. We designed our review to assist MSHA in completing any corrective actions necessary prior to issuing the contract.

The contract was prepared in response to an unsolicited proposal, dated May 5, 1994, from the UMWA requesting a total of \$344,274 to fund a course of health and safety training for members of the Mine Health and Safety Committee established by the Joint Industry Training Committee provided for in the National Bituminous Coal Wage Agreement of 1993 and the 1993 Wage Agreements with members of the Independent Bituminous Coal Bargaining Alliance. The contract funds were intended for two purposes:

- o \$258,314 was to be used to pay all travel related costs, including mileage, lodging and food, for the 700 Mine Health and Safety Committeemen and 195 company representatives expected to attend the training; and
- o \$85,960 was requested for equipment required for the training.

Our research and discussions with officials of MSHA, the UMWA and the BCOA indicated that the training program for the Mine Safety and Health Committee has been operated for at least the past 20 years with various sources of funding. Prior to 1979, the Department of the Interior and, possibly, the Department of Labor (DOL) had provided assistance with the travel costs of some participants in this course. More recently, BCOA and independent coal operators paid a portion of the travel related costs of the training and the difference was funded through a settlement resulting from a mining disaster in Boone County, West Virginia. According to officials of the UMWA, the Boone County settlement fund has been exhausted.

II. Issues and Concerns

1. Propriety of the Funding

The proposed funding of the Mine Health and Safety Committee training program by MSHA raises serious propriety issues in view of the contractual obligations of the UMWA and the employers to establish and fund this training course under the provisions of their collective bargaining agreements. Additional policy issues warranting

consideration include the nature of the organizations to be offered support for travel expenses, vested business interests or incentives for the parties to assume the costs and creating the potential appearance of a favored relationship with specific groups.

Most serious among our concerns about the propriety of the funding is the existence of a contractual obligation under the collective bargaining agreements for the UNWA and the employers to provide this training program. Both the National Bituminous Coal Wage Agreement of 1993 and a representative 1993 UMWA Wage Agreement with a member of the Independent Bituminous Coal Bargaining Alliance (IBCBA) state, "The Union and the Employer shall jointly establish and fund a course of health and safety training for members of the Mine Health and Safety Committee, which is designed to improve health and safety knowledge and skills."

Closely related to the issue of the coal operators' and Union's contractual obligation is the question of a valid need for MSHA's financial assistance which may be the result of a lack of planning by some of the collective bargaining parties to fulfill their contractual responsibilities. For example, both wage agreements cited above provide for several types of training programs and, in most instances, establish specific procedures for funding the training. With respect to the training program for which MSHA support has been requested, neither Wage Agreement establishes a dedicated fund or discusses other specific procedures for financing the costs. Officials of the BCOA advised that their members were prepared to fund the travel costs for their Committeemen and company representatives to attend the training, as they have done in the past. The BCOA officials also noted that, since the independent coal operators and the UMWA share the contractual responsibility for the program, they would consider it inappropriate for MSHA to fund some of the parties while excluding the others.

Our review did not identify either statutory impediments or existing DOL policies which would prohibit MSHA from entering into the proposed contract. While a 1979 opinion by the Comptroller General specifically ruled against MSHA's funding the travel of non-Government personnel for training absent specific legislative authority because of 31 USC 1345, OIG counsel and SOL have advised that the 1992

appropriations provision allows the use of salaries and expenses. funds for attendance at meetings and permanently exempts DOL from the 31 USC 1345 statutory prohibition. However, neither the Department nor MSHA had developed specific policies or procedures to serve as guidance for those circumstances under which the agencies would or would not provide funding for the travel of non-Government personnel.

In addition to pre-existing contractual or other obligations, issues which warrant careful consideration in the development of DOL or MSHA policies for funding the travel of non-Government personnel include: the nature of the groups to be offered such assistance (e.g., private for-profit companies, non-profit organizations, etc.); benefits and/or incentives to the parties to participate in the function; and creating the potential appearance of a favored relationship with specific groups. In the case of the proposed training contract, the nature of the groups is self-evident, while the question of past and possible future precedents for MSHA and DOL merit further exploration. With respect to the economic benefits to the coal operators to sponsor this training program, the proposal submitted to MSHA states:

"A mining accident increases the cost of business through medical care costs, reduced production, insurance costs and benefits to the victim's family. A single injury or illness can result in hundreds of thousands of dollars in medical, compensation and other costs. According to statistics compiled by the U.S. Bureau of Mines, a single death results in a cost of \$1,158,000."

The concerns discussed in this section regarding the propriety of the funding in conjunction with the additional policy issues, in our opinion, weigh strongly against authorizing the proposed contract for this training program. However, should MSHA proceed with the contract, the items in the following sections require attention.

2. Curriculum and MSHA Mission

Our review of the curriculum for the training program indicated that some planned topics are not directly related to technical safety and health issues. Since appropriation law permits Federal agencies to expend funds only for

purposes which are authorized by their legislation, we consider questionable the proposed expenditure of \$45,853 (see Schedule 1) in travel related costs for the sessions discussed below.

Approximately one and one-half days of the training are devoted to training not directly applicable to MSHA's mission. Specifically, a full day of training is scheduled for communications and team building which are referenced in the proposal to the Labor Management Positive Change Program (LMPCP). The LMPCP is discussed in the Wage Agreements of 1993 and a fund for this program is established through employer contributions of three cents per hour worked. In addition, approximately one-half day is devoted to training on the Union's views of the role of the Safety and Health Committee and management's views of the committee's role.

MSHA officials concurred with our position on the LMPCP topics, during our briefing on September 26, 1996, but advised that they considered the curriculum on the Committee's role to be germane to MSHA's mission. We requested written comments in the event MSHA reaches a decision to fund the questioned subjects.

3. Procurement Issues

Several issues with respect to the contract were identified and brought to the attention of MSHA officials early in the course of our review. During our meeting on September 26, 1996, MSHA officials advised that all of these items have been corrected in a revised version of the contract. Since we have not had the opportunity to review the revised contract and confirm the corrections, we are summarizing the issues in this memorandum.

- o Contract Language The contract language (e.g., the Description of Services, the Scope and the Statement of Work) did not accurately describe the purpose of the contract and the application of the funds. In particular, there was no mention of the use of the funds to pay for the travel related costs of the training participants or any explanation indicating that travel costs were the basis of the price per class shown in the contract. In addition, the contract we reviewed omitted any reference to the training of the 195 company representatives mentioned

in the proposal, but the contract costs were not adjusted accordingly.

o Fixed Price Payment Basis. Both the UMWA's contract proposal and the original fixed-price contract which we reviewed computed \$258,314 of travel expenses based on exact costs for lodging, meals, and mileage of the trainees. However, both the UMWA's proposal and MSHA's contract were based only on the *estimated* number of trainees per class. It is critical that the payment terms provide the flexibility to adjust travel payments to the actual number of trainees, rather than the estimated training attendance.

o Disposition of Equipment. The contract was silent regarding which party will take possession of the equipment at the completion of the training. The interest of the Government dictates that the final disposition of the equipment be clearly specified in the terms of the contract.

4. Waiver of MSHA Academy Costs

MSHA's plans to waive fees valued at \$82,236 (see Schedule 2) for the use of the MSHA Academy will require reconsideration in the event the contract is not executed or funding is not authorized for all proposed organizations. The waiver of room and board costs is appropriate to avoid the administrative burdens of paying the trainees for the full travel costs and requiring them to reimburse MSHA for the Academy fees, if MSHA contracts for the travel expenses of all individuals requested in the proposal. The participants in the Mine Health and Safety course do not, however, meet any of the fee exemption criteria established in MSHA's regulations which state, "The Academy will charge room and board to all persons staying at the Academy, except MSHA personnel., other personnel performing a direct service for MSHA, and persons attending the Academy under a program supported through an MSHA State grant." Thus, if the contract is not approved or the travel expenditures of any group are eliminated, room and board costs at the Academy should be charged in accordance with the regulations.

At the September 26, 1996 meeting, a decision on the waiver of MSHA Academy fees was deferred pending the resolution of

the other matters addressed in this memorandum.

III. Recommendations

In view of the significance of our concerns regarding the propriety of this proposed contract in conjunction with the related policy issues, we recommend that the Assistant Secretary of Mine Safety and Health not authorize the funding for the training program under consideration. However, if the Assistant Secretary decides to proceed with the contract, we recommend that, at a minimum:

1. The funding level be reduced by the \$163,379 in travel expenses estimated for the BCOA Committeemen and company representatives.
2. The funding levels be further reduced by the estimated cost of food and lodging for the training not directly related to MSHA's mission.
3. A policy statement be developed, in coordination with Departmental management, to address circumstances under which MSHA will fund the travel of non-Government personnel.
4. The contract be re-submitted to the Procurement Review Board with a complete description of the proposed application of the funds and an expanded background section, including the Wage Agreement provision concerning the joint establishment and funding of the training by the Union and the Employer.
5. The payment basis be revised to ensure adequate provisions for the adjustment of travel costs in accordance with actual attendance.
6. The contract language be revised to more accurately describe the purpose of the contract and the application of the funds and to address the disposition of the equipment at the completion of the training program.
7. Room and board costs at the Academy be charged for any participants whose travel expenses will not be funded under the contract.

The Assistant Secretary for Mine Safety and Health responded to our draft report on October 30, 1996, advising that MSHA will not execute the proposed contract and will reconsider the waiver of MSHA Academy fees for the training proposed to be conducted under the contract. (A copy of MSHA's response is included as an attachment to this report.) On the basis of this response, we have resolved and closed Recommendations 1 through 6, above. Please provide us your decision with respect to the waiver of the Academy fees within 60 days to enable us to resolve the remaining recommendation.

We appreciate the positive actions you have taken in addressing our recommendations and the cooperation we have received from you and your staff during this review. Please do not hesitate to address any questions you have concerning this report to Veronica Campbell at (202) 219-8446, ext. 143.

Attachments

TRAVEL EXPENSES FOR JITP TRAINING

BCOA	CLASS#	COMMITTEEMEN	COMPANY REPS	ACADEMY	OUTSIDE LOCATION	COST OF INDIRECT TRAINING
	1	15	5		11865	2500
	2	11	5	336		
	3	14	5	285		
	4	17	5		13230	2750
	5	36	10		26790	5750
	6	15	5		12100	2500
	7	11	5		9040	2000
	8	15	5		12100	2500
	9	45	5	1500		
	10	35	5		24000	5000
	11	25	5		18200	3750
	12	39	10		30690	6125
	13	18	5	345		
	14	55	20	1575		
	15	43	20	1323		
	SUB-TOTAL	394	115	5364	158015	32875
INDEPENDENTS						
	16	32	10	5040		
	17	21	5		13618	2860
	18	41	5		15290	1035
	19	32	5		12455	833
	20	16	5		13988	2825
	21	35	10		28250	5625
	22	47	15	2604		
	23	50	15	1170		
	24	32	10	2520		
	SUB-TOTAL	306	80	11334	83601	12978
	TOTALS	=====	=====	=====	=====	=====
		700	195	\$16,698	\$241,616	\$45,853

SCHEDULE 1

MSHA FEE WAIVERS FOR JITP TRAINING

BCOA	CLASS#	COMMITTEEMEN	COMPANY REPS	TOTAL	ROOM AND BOARD
	2	11	5	16	\$2,879.15
	3	14	5	19	\$3,418.99
	9	45	5	50	\$8,997.35
	13	18	5	23	\$4,138.78
	14	55	20	75	\$13,496.03
	15	43	20	63	\$11,336.66
	SUB-TOTAL	186	60	246	\$44,267
INDEPENDENTS					
	16	32	10	42	\$7,557.77
	22	47	15	62	\$11,156.71
	23	50	15	65	\$11,696.56
	24	32	10	42	\$7,557.77
	SUB-TOTAL	161	50	211	\$37,969
	TOTALS	=====	=====	=====	=====
		347	110	457	\$82,236

SCHEDULE 2

U.S. Department of Labor Mine Safety and Health
Administration
4015 Wilson Blvd.
Arlington, Virginia 22203-1984



OCT. 30, 1996

MEMORANDUM FOR: CHARLES MASTEN
Inspector General

FROM: J. DAVITT McATEER
Assistant Secretary for
Mine Safety and Health

SUBJECT: Review of MSHA Contract with the United Mine
Workers of America and the Bituminous Coal
Operators Association
Report No. 08-OEI-97-MSHA

This is to advise you that the Mine Safety and Health Administration (MSHA) will not execute the contract for the training proposed by the United Mine Workers of America and the Bituminous Coal Operators' Association. The training contemplated by the proposal was designed to enhance safe and healthful working conditions for miners. However, as found in your report, funding cannot be made available in view of the existing contractual arrangements between the parties. In addition, as recommended in the report, we will reconsider the waiver of MSHA Academy fees for the training proposed to be conducted under the contract.

Your prompt attention to this matter and the thorough work of your staff is appreciated.

